

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAVID KINLOCK,

Plaintiff,

- against -

MARTHA YOURTH,

Defendant.

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11 Civ. 8696 (JGK)

MEMORANDUM OPINION AND  
ORDER

JOHN G. KOELTL, District Judge:

The Court has received the attached correspondence from the plaintiff, which it forwards to the defendant.

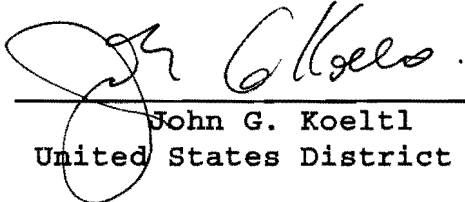
The plaintiff requests that the Court appoint him counsel. However, from the papers provided, the Court cannot determine whether the necessary showing for appointment of counsel has been met. The Court of Appeals for the Second Circuit has articulated factors that should guide the Court's discretion to appoint counsel to represent an indigent civil litigant under 28 U.S.C. § 1915. See Hodge v. Police Officers, 802 F.2d 58, 61-62 (2d Cir. 1986). For the Court to order the appointment of counsel, the plaintiff must, as a threshold matter, demonstrate that his claim has substance or a likelihood of success on the merits. See Hodge, 802 F.2d at 60-61. Only then can the Court consider the other factors appropriate to determination of whether counsel should be appointed: "plaintiff's ability to obtain representation independently, and his ability to handle the case without assistance in the light of the required factual

investigation, the complexity of the legal issues, and the need for expertly conducted cross-examination to test veracity."

Cooper v. A. Sargenti Co., Inc., 877 F.2d 170, 172 (2d Cir. 1989). The plaintiff has not yet made such a showing. The plaintiff's application for the Court to appoint counsel is therefore denied without prejudice for failure to make the required showing at this time.

SO ORDERED.

Dated: New York, New York  
May 4, 2012



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John G. Koeltl  
United States District Judge

April 20, 2012

Dear Honorable Judge Koeltl:

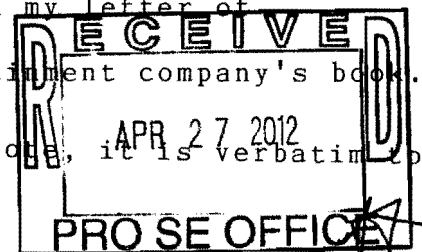
**SCANNED**

My name is David Kinlock. I am writing this letter in regards to my pending case against Martha E. Yourth-Case Number 11 Civ. 8696(JGK).

I am very displeased to see the kind of people who are placed in position by the government who fails to perform a duty that is required by law to do so- effectively with facts and not assumptions. It then raises a question of how many other countless defendants that were injured by such negligence.

This statement is because I was recently tested by Dutchess County Jail Medical Unit and New York State Department of Correctional Services Medical Unit for my requested HPV testing. I was then notified by both facilities nurses that I do not have HPV. Also, my wife of 2 years, who I have a newborn baby with- has not been diagnosis with such disease. Therefore, I could not infected the victim with HPV as Defendant Yourth lied and stated in her case summary report. Thereby, making Defendant Yourth statement false, perjured and misleading. Such statement has affected me negatively and I suffered irreparable injury. Also, such statement is a defamation of my character, cruel and unusual punishment. Hence, violating my civil and constitutional rights of due process of law. Why did Defendant Yourth lied about this? Why didn't Defendant Yourth verify pertinent information before writing her report.

In addition, the mailing incident that happened to me in prison. That any prudent person could have easily made that same mistake. You see, in prison I was submitting one of my many manuscripts for review to be purchased by a production/entertainment company. I concluded in my letter of submission the same writing language from the entertainment company's book. If you get the book and look at Defendant Yourth's quote, it is verbatim to



(2)

the content of the back of the book. Defendant Yourth then twisted such writing language into saying that: "it is clear that he is in the process of re-inventing who he will be when he is released". How twisted is that? How can someone take something positive and makes it look negative?

But prior to my 2006 conviction, my entire criminal record consisted of issuing bad checks and failure to return a rent-a-car on time. I have a college degree and had own businesses. Therefore, I cannot fathom how Defendant Yourth can formulate such from my past criminal record. How can Defendant Yourth assume that about me based on my manuscripts submission letter? However, because Defendant Yourth is racist and narrow-minded, little did she know that many African-Americans urban books were written and published by inmates during their incarceration. And now they are very successful and they never re-offend. Just to name a few: Vickie Stringer, Terri Woods, Shannon Holmes, Wahida Clark, Joe Black and many others. How many inmates do you see using their time wisely and write books and motion picture screenplays or doing something positive with their time during incarceration, like I was. Defendant Yourth should have commended me for doing such positiveness. A matter of fact, that same manuscript was sold prior to me getting married in 2009 for \$10,000. Was Defendant Yourth's interpretation/assumption legal, lawful or constitutional?

Furthermore, it has been brought to my attention that all of a sudden, Defendant Yourth had conveniently retired from the Board. Does this means that her criminal negligence acts against me is ignored and I am left to suffer with the repercussions of such bad faith actions? Is such legal, lawful, permissible and constitutional?

In addition, it has also been brought to my attention that Defendant Yourth is qualified immunity. According to law, qualified immunity means that officials will only have to pay money damages if "their conduct

violate(s) clearly established statutory or constitutional rights of which a reasonable person would have known". A reasonable person would not have done what Defendant Yourth did. Senior Parole Officer Kelly completed a parole evaluation summary report on me on April 16, 2012, however, Officer Kelly never entered the same incorrect arrest charges as Defendant Yourth did. Both having the same criminal arrest record data. Why is that? Therefore, Defendant Yourth must be held liable for such actions. Isn't it a statutory and a constitutional right to be evaluated fairly based on correct information? Is it legal, lawful or constitutional for Defendant Yourth to not fairly evaluate me with due process of law.

In conclusion, it is clear and evident that Defendant Yourth's entire evaluation analysis and recommendation of me in her case summary report was based on mere assumptions, false, perjured and misleading information and not facts. Defendant Yourth knew that her duty is to accurately read my criminal arrest charges on my rap sheet, then record such data. Instead, she imputed false criminal arrest charges in her report that never existed. Defendant Yourth also knew that my past criminal arrests never consisted of any gang-RELATED ACTIVITIES. Thereby, her assumptions of saying that I would be re-inventing who I would be when I am release is delusional, unfair, unjust, illegal, unlawful and unconstitutional. On what basis was such conclusion drawn on? Hence, her statement is false, perjured and misleading. Defendant Yourth also knew that I was never diagnose with HPV because my Dutchess County Jail Medical Record confirms it. Therefore, her statement have mislead many readers and tainted their view of me. Did Defendant Yourth accurately, fairly and EFFECTIVELY PERFORMED A DUTY IMPOSED UPON HER BY LAW? How can an instrument THAT CONTAINS TAINTED AND DEFECTIVE INFORMATION/STATEMENTS BE CONSIDERED VALID? Did Defendant Yourth not mislead a public servant in performance of his official FUNCTION? What would the judge do if he was fully aware of the contents of Defendant Yourth's report? Why did Defendant Yourth's supervisor cover up such wrong and ignored it like it never happened? Why didn't Defendant Yourth's supervisor try to remedy the wrong after being fully aware of the wrong? Isn't

it because Defendant Yourth's supervisor created a policy or custom that allows such violation(s) to occur and continues? Is such policy or custom legal, lawful, permissible and constitutional? However, according to Defendant Yourth and her defense attorney Hartofilis, it is legal, lawful, permissible and constitutional for Defendant Yourth to lie and submit false, perjured and misleading information and not facts. Also, it is legal, lawful, permissible and constitutional if Plaintiff have suffered irreparable injury because of SUCH CRIMINAL NEGLIGENCE AND IN BAD FAITH ACTS. Plaintiff is not entitled to any sort of relief because the statute of limitations has expired? Why is that? Is such lawful, legal, permissible and constitutional? Is this what the United States Constitutional and America was built on? Aren't Plaintiff and any other American citizen entitled to equal protection of the laws under the 14th Amendment to the United States Constitution. Can any official abuse their discretion of power and hurt anyone without consequences because of immunity? Is this justice? What hope in the judicial system does this give others and FUTURE GENERATION?

Even though the time limitation might be expired to file a claim. This is because Plaintiff was not given an opportunity to view Defendant Yourth's report before it was submitted to the sentencing judges. Therefore, Plaintiff and Plaintiff's attorney was not aware of such inaccuracies and false information. Hence, Can Defendant Yourth's actions still be ignored? How can Defense Attorney Hartofilis argue the facts that proves that Defendant Yourth acted under color law because she: 1) directly participated in the wrong of making up false criminal arrest charges about Plaintiff. Along with imputing ~~false information~~ <sup>false information</sup> with formulating an inaccurate analysis on Plaintiff based on assumption and not facts. 2) knew about the wrong but did not try to stop or fix it; 3) failed to oversee the People who cause the wrong to occur. Per Defense Attorney Hartofilis's letter to the court, dated March 27, 2012, Plaintiff noticed that not one time did she admitted or deny any of the ALLEGATIONS IN my complaint. Why is that? Isn't it the defense attorney's

duty to investigate the allegations in Plaintiff's case to verify accuracy.

Then per findings, give any answer to such allegations? Why was that not done in defense Attorney Hartofilis's letter? It is as if the allegations are being ignored by defense attorney Hartofilis.

How come when a person commits a crime the court automatically expects a defendant to admit their guilt and take full responsibility for their actions? However, Defendant Yourth and her defense attorney have not done so with my case. Isn't this hypocritical? The facts in my complaint are clear and evident and true in its entirety. Therefore, there is no arguing or disputing that there was any wrong done to me. Thereby, some sort of relief to me is thus warranted and such errors should be corrected.

\*Per CPL Section 175.35-Offering a false instrument for filing in the first degree. A person is guilty of offering a false instrument for false statement or false information and with intent to defraud the State or any political subdivision, public authority or public benefit corporation of the State, he offers or presents it <sup>to</sup> ~~at~~ a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will ~~be~~ be filed with, registered or recorded in or otherwise public authority or public benefit corporation.

\*Per CPL 15.20. Effect of ignorance or mistake upon liability. 1. A person is not relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief of fact.


I thank you for taking time in reading this letter. Any and all assistance in this very serious matter will be greatly appreciated.

Respectfully Submitting,

  
David Kinlock, Plaintiff Pro Se

Sworn to before me on this

24 day of April, 2012

  
NOTARY PUBLIC  
LINDA CANNON  
Notary Public, State of New York  
No. 01GA5216459  
Qualified in Dutchess County  
Commission Expires 1/19/2014



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAVID KINLOCK,  
PLAINTIFF,

11 Civ. 8696(JGK)

-against-

APPLICATION FOR THE COURT  
TO REQUEST COUNSEL

MARTHA E. YOURTH, EMPLOYEE OF  
NEW YORK STATE BOARD OF EXAMINERS,  
INDIVIDUALLY AND IN THEIR OFFICIAL  
CAPACITIES,  
DEFENDANT.

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I, DAVID KINLOCK, am a party in this case and unable to afford the services of an attorney. I hereby request the Court to grant my request for counsel to represent me in this proceedings.

1. In support of my application, I provide the following information:
  - A. I need a lawyer because Section 1983 claims involve complex issues that are difficult to understand and litigate effectively for non-lawyers.
  - B. I cannot afford a lawyer at this time.
  - C. I speak only English. Need a lawyer that speaks English.
2. I have previously filed a Request to Proceed In Forma Pauperis application in this proceeding, and it is a true and correct representation of my current financial status.
3. I understand that if a lawyer volunteers to represents me and that a lawyer learns that I can afford to pay for a lawyer, the lawyer may give this information to the court.
4. I understand that if my answers on this application are false, my case may be dismissed.
5. I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 24, 2012



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK x

DAVID KINLOCK,  
PLAINTIFF,

- against -

11 Civ. 8696 (JGK)

AFFIDAVIT OF SERVICE

MARTHA E. FOURTH, EMPLOYEE OF  
NEW YORK STATE BOARD OF EXAMINERS,  
INDIVIDUALLY AND IN THEIR OFFICIAL  
CAPACITIES,  
DEFENDANT. x

STATE OF NEW YORK )  
COUNTY OF DUTCHESS ) ss:

Name of Documents: (1) April 20, 2012 letter to Honorable Judge Koethl (2) Application For THE Court To Request  
Counsel.

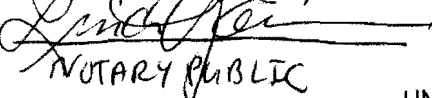
I, DAVID KINLOCK, being duly sworn, deposes and says.

That I have on this 24<sup>th</sup> day of April 2012, placed and submitted within the Downstate Correctional Facility  
mail depository the original and copies of the same moving papers to be duly mailed via United States  
Postal Service to the concerned parties as listed below.

① United States District Court, SDNY  
Attn: Clerk of Court  
500 Pearl Street  
New York, New York 10007.

② State of New York office of Attorney General  
Attn: Maria Hartofilis, Assistant Attorney General  
120 Broadway  
New York, New York 10271.

Sworn to before me on this  
24<sup>th</sup> day of April 2012

  
NOTARY PUBLIC

LINDA GANNON  
Notary Public, State of New York  
No. 01GA6216459  
Qualified in Dutchess County  
Commission Expires 1/19/2014

Respectfully Submitting,

  
David Kinlock, petitioner/plaintiff, pro se